IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 5 OF 1999

Dr.(Mrs.) Rajashri Subhash Kamble,
C/o.Mr.D.S. Gadekar,
100, Municipal Hudge,
Delhi Gate, Ahmednagar-414 001) ...Applicant
(Orig.P.W.2)

V/s.

1) Dr.Subhash Babanrao Kamble,)
Age 32, Medical Practitioner)

2) Rajkumar Baban Kamble,)
Age 27 years,)

3) Baban Piraji Kamble,)
age 52 years, Occ.Service)

4) Sou.Anuradha Baban Kamble,)
Age 45 years,)

5) Kum.Rekha Baban Kamble,)
age 25 years,

All resident of Mulegaon)(ORIG.ACCUSED)
Sheti Farm, Hyderabad Road, Solapur)

6) State of Maharashtra) ...Respondents
(Orig.Complainant)

Shri Rajesh Behere for the Applicant.

Shri V.V. Purwant for Respondent Nos.1 to 5.

Shri P.S. Hingorani, APP for Respondent No.6-State.

CORAM : V.M. KANADE, J.

DATED : MARCH 9, 2007

ORAL JUDGMENT :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for respondent Nos.1 to 5.

2. This is a criminal revision application filed by the original complainant against the respondent challenging the judgment and order passed by the JMFC, Solapur, whereby he acquitted the respondents herein of the offence punishable under Section 498A of the IPC. It is an admitted position that the State has not preferred an appeal against the said order.

3. Brief facts are that the petitioner-original complainant having got married to respondent no.1 in December 1994 started residing with respondent no.1 at

Solapur. Respondent nos.3 and 4 are the in-laws of the petitioner and respondent nos.2 and 5 are the brother-in-law and sister-in-law of the petitioner. The prosecution case is that the petitioner resided at the matrimonial house from December 1994 to August 1995 and thereafter, left forcefully matrimonial house and thereafter, she started residing with her parents at Ahmednagar. A complaint was filed by her dated 9.3.96 in which she alleged that respondent nos.1 and 6 had demanded dowry of Rs.1 lakh for the purpose of purchasing T.V. set, Washing Machine and Telephone and because the demand was not met, all the accused harassed her both physically and mentally and as such, had committed an offence punishable under Section 498A read with Section 149 of the IPC. Chargesheet was filed against the accused and the prosecution examined the petitioner, her parents and other witnesses in support of its case. The prosecution also examined accused defence witnesses. The trial Court after going through the evidence on record held that there was delay in filing the FIR and further after appreciating the evidence on record, came to the conclusion that there

were several inconsistencies found in the version given by the petitioner herein and other witnesses viz. her father and mother and therefore, did not accept the version of the petitioner of demand of dowry and ill-treatment at the hands of respondent nos.1 to 5. The trial court also took into consideration the letters which were written by the petitioner to her mother in which she had not mentioned the incidence which were alleged by her in the FIR and in her evidence. The trial Court also after appreciating the evidence on record has come to the conclusion that there were inconsistency in the version of PW 2 in the FIR and in the evidence. Further, the trial Court has taken into consideration the letters which were written by the petitioner to respondent no.1 in which she has stated that she had reached Ahmednagar safely. This letter was written on 16.8.95 which letter itself according to the trial court showed that the story and allegation of the petitioner that she was dragged out of the house by the accused, was doubtful. The trial Court, therefore, acquitted the accused of the offence punishable under Section 498A read with Section 149 of the IPC.

4. Shri Behere, learned Counsel appearing for the petitioner submitted that though the jurisdiction of this court while exercising the revisional jurisdiction under Section 401 of the Cr.P.C. was limited, yet it was open for this Court to consider the oral and documentary evidence on record in order to find out whether the trial court had properly appreciated the evidence on record and in the event, a perverse finding was recorded or after material evidence which was on record, he submitted that this Court could set aside the impugned order and direct that the matter should be remanded for retrial. In support of the said submission, he relied on the judgment of the Supreme Court in the case of **Akalu Ahir and others, Appellants vs. Ramdeo Ram, Respondent reported in AIR 1973 SC Page 2145.** It is submitted that the Supreme Court had indicated various categories of cases which would justify the High Court in interfering with the finding given. He submitted that in the instance case also, the finding recorded by the trial court was perverse as it had not taken into consideration the true scope of the

provisions under Section 498A. He brought my attention to the deposition of the petitioner. It is submitted that the testimony of PW 2 itself was sufficient for coming to the conclusion that the respondents had committed offence punishable under Section 498A. He submitted that in the instant case, the provisions of Section 498A subclause (b) were clearly attracted. He further submitted that the statements of the neighbours ought to have been recorded by the Investigating Officer and in the absence of such statements being recorded, there was clear indication that the prosecution had not investigated the offence properly. It was submitted that this was another reason why the impugned order was liable to be set aside and retrial to investigate in the present case.

5. I have heard Shri Purwant, learned Counsel for the respondent nos.1 to 5. He submitted that the trial Court has properly appreciated evidence on record and there was no reason to interfere with the said finding which was recorded by the trial court. He submitted that it is a settled position in law that even in cases

where two views are possible and the trial court had taken one view, the revisional court should not again take another view of the matter and send the matter for retrial.

6. I have given my anxious consideration to the submissions made by both the learned Counsel for the petitioner and the learned Counsel for the respondents. It is well settled position in law that this court and power of this court while exercising jurisdiction under Section 401 of the Cr.P.C. is very limited. Section 401 Subclause 3 mandates that this court cannot convert the order of acquittal into the order of conviction and that only in exceptional cases, where perverse finding is recorded by the trial Court or where certain important material which is on record, is overlooked or ignored, only in such limited cases this court can interfere with the order of the acquittal which is passed by the trial court particularly when the State has not preferred an appeal against the order of acquittal. After having perused the impugned order, I do not find any infirmity in the said order as the trial

court has considered the evidence on record from every angle and has noted the discrepancy in the evidence of the petitioner and the other witnesses as also considered the evidence of the defence witnesses which has not been shaken in cross-examination. The evidence of the defence witnesses indicates that respondent no.1 had already constructed a house much before his marriage with the petitioner. There is also a discrepancy in the FIR and her evidence. The letters which are written by the petitioner to respondent no.1 after she reached the matrimonial house are also self eloquent. Further letters which were written by the petitioner to her mother during the few months where she was residing with the respondent do not show that she was ill-treated by her husband and in-laws. The petitioner was residing with her husband and in-laws for a period of almost eight months. In the complaint which is also filed belatedly, she has stated that the first two months, complainant was alright even out of the eight months for a period of two months. There was no complaint against the husband and in-laws. The trial court has also observed that the petitioner was keen to go back to her

parental house for the purpose of completing her M.D. This fact also cannot be overlooked. Taking into consideration all these aspects, in my view, there is no reason to interfere with the impugned order. So far as the judgment on which reliance is placed by the learned Counsel for the petitioner is concerned, the Supreme Court in **Akalu Ahir's case (supra)** has, on the contrary, observed after taking into consideration the earlier judgments that the scope of the High Court is very limited. It would be fruitful to notice the observation made by the Supreme Court. The Supreme Court in para 7 has observed as under :-

> "Now adverting to the power of revision conferred on a High Court by Sec. 439 read with Sec. 435, Cr.P.C. it is an extraordinary discretionary power vested in the superior court to be exercised in aid of justice; in other words, to set right grave injustice. The High Court has been invested with this power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and

> that the subordinate Courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of Sections 435 and 439, Cr.P.C., does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice. This power is certainly not intended to be so exercised as to make one portion of the Code of Criminal Procedure conflict with another; as would seem to be the case when in the garb of exercising revisional power, the High Court in effect exercises the power of appeal in face of statutory prohibition."

7. In para 8 also, the Supreme Court has considered the power of the State to prefer an appeal against acquittal and has observed that the unrestricted right of appeal from acquittal was specifically conferred only on the State and the private complainant was given this right when the criminal prosecution was instituted on his complaint and it was again subject to special leave

by the High Court. Further, in para 8, the Supreme Court has observed as under :-

> "The High Court’s power in such cases is circumscribed by the provisions of Sections 417 and 439 Cr.P.C. and also by the fundamental principles of our criminal jurisprudence. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court in the course of trial, that the High Court is empowered to set aside the order of acquittal and direct the re-trial of the acquitted accused persons. From the very nature of this power, it should be exercised in exceptional cases and with great care and caution. Trials are not to be lightly set aside when such orders expose the accused persons to a fresh trial with all its consequential harassment."

8. The Supreme Court then proceeded to consider the observations which are made by the Apex Court in the

case of **K.C. Reddy reported in AIR 1962 SC 1788** wherein in the said case, the Supreme Court had indicated various categories of cases which would justify the High Court in interfering with the finding of acquittal in revision. The Supreme Court observed as under :-

> "This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:-
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> (i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the accused;
>
> (ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;
>
> (iii) Where the appellate Court has wrongly held the evidence which was admitted by the trial

Court to be inadmissible;

(iv) Where the material evidence has been over-looked only (either?) by the trial Court or by the appellate Court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal."

9. The Supreme Court reiterated this position in the case of **Mahendra Pratap Singh reported in AIR 1968 SC 707.** It would be useful to note the observations made by the Supreme Court in the case of **D.Stephen's case reported in AIR 1951 SC 196.** The Supreme Court in

para 10 of the said judgment has observed as under ;-

> "The revisional jurisdiction conferred on the H.C. under S.439, Criminal P.C., is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Govt. has a right of appeal under S. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Ct. has taken a wrong view of the law or misappreciated the evidence on record. As already pointed out, there has been no such error in the present case, on the other hand, it seems to us that on both the previous occasions, the learned Chief Presidency Mag. was right in holding that the accused was not guilty of any offence under Ss. 25 & 26, Merchant Shipping Act."

10. I am of the view that none of the categories which are elaborated by the Supreme Court in the aforesaid case are applicable to the facts of the present case. The ratio of the said judgment, therefore, would not be of any assistance to the case of the petitioner. In the result, there is no reason to interfere with the impugned order.

. Criminal Revision Application is, therefore, dismissed.

(V.M. Kanade, J.)